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October 26, 2018

By ECF

Hon. Ann Donnelly
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Shaulov v. State of New York*, No. 18 Civ. 4151 (AMD)(PK)

Dear Judge Donnelly:

This Office represents defendant State of New York and the New York State Department of Corrections and Community Supervision (sued as "New York State Department of Corrections" and herein "DOCCS") in the captioned case (collectively "State Defendants").¹ We write pursuant to Individual Rule 4(A)(i) to request a pre-motion conference in regard to the State Defendants' anticipated motion to dismiss the claims against them in plaintiff's Amended Complaint, (Docket No. 2), pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The grounds for the anticipated motion are that the claims plaintiff brings against the State and the state agency DOCCS, which are asserted under Section 1983 and state law, are frivolous because: (1) all claims are facially barred by the Eleventh Amendment and sovereign immunity, *see, e.g., Pennhurst Interstate Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105-06 (1984), and (2) neither the State nor DOCCS is a "person" subject to suit under Section 1983. *See, e.g., Will v. Michigan Dept. of State Police*, 491 U.S. 58, 63-71 (1989). There are in any event no factual allegations against the State Defendants contained in the Amended Complaint.

¹ We note that the amended complaint also names "New York State Department of Probation" as a defendant. There is no such entity. There appears to be an office for the New York CITY Department of Probation at the purported service address, 210 Joralemon Street, Brooklyn, NY 11201. *See* Docket No. 8. Plaintiff's counsel has been so advised.

Accordingly, for the reasons set forth above, State Defendants respectfully request a pre-motion conference in regard to their contemplated motion to dismiss all claims asserted against them in this case.²

Respectfully submitted,

/s/

Daniel Schulze
Special Litigation Counsel
(212) 416-6557

cc: Counsel of Record (by ecf)

² We note that an attorney affiliated with plaintiff's counsel of record attempted to file a Notice of Dismissal that would dismiss the State as a party defendant. (Docket No. 15). We remain hopeful that plaintiff will both correct this filing, and file a similar notice (a proposed draft of which we have provided to counsel) dismissing the frivolous claims against DOCCS. Filing of these notices would, of course, obviate the need for the present motion.